The Case of Socialism *v.* The Catholic Church and the United States

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THIS paper was read in Cathedral College Hall on December 18 and 20, 1917, to Catholic pastors and assistants, presided over by His Most Reverend Eminence John Cardinal Farley. In the discussion which followed the reading, the paper was approved as representing the views of those present. This brief puts together some texts, on the one hand, from Encyclicals of Pope Leo XIII. and accepted maxims of Catholic jurists and, on the other hand, from our Declaration of Independence and amendments of our Federal Constitution and pronouncements of our Federal Supreme Court Justices interpreting clauses of the Declaration and amendments. In these authentic texts the reader is enabled to see with his own eyes that the Catholic Church and the United States hold the same fundamental principles on the right of private property as founded on nature and God, and as limited by the ample authority of the State and its laws made for the general welfare. Socialism denies that the right of private property is from nature and God, and is thus seen to be fundamentally anti-Catholic and anti-American. Given the Catholic and American principle that the right of private property, although derived from nature and God, is yet circumscribed by limits imposed on it by the necessities of our neighbor and

[1] *Cf.* Vermeersch, *Quæstiones de Justitia*, n. 231 *et seq.* Hannis Taylor, *Due Process of Law*, p. 491 *et seq.*

the ample authority of the State to enact new laws suited to new conditions, there is, at least in our country, no excuse to heed clamors of Socialists or the Socialistic for a reconstitution of society. It is hoped that the texts here put together, with some explanations of the meaning of their terms, will help to satisfy minds now more or less bewildered by dogmatisms which led to the Reign of Terror, the Paris Commune and the Russian Bolsheviki.

What is meant by the right of private property? It is the right in private individuals of perfectly disposing of a corporeal thing unless these individuals are prohibited by the law. This definition was made by Bartoli. It is commonly accepted by other jurists and also by the great scholastics such as Molina, Lessius and Lugo.

Another definition which is widely received is: The right of disposing, for one's own advantage, of the utility and the substance of a thing, within the limits placed by a just law. This definition more clearly distinguishes between the dominion of property and the dominion of jurisdiction, which latter includes the right to dispose not for individual advantage but for the general welfare. It also more explicitly explains what is meant by disposing *perfectly.* It mentions not only the utility but also the substance of a thing.

With these definitions is in accord a celebrated description of the right of property by an anonymous Roman jurist: "*Jus utendi et abutendi quatenus juris ratio patitur*—the right of using and abusing in so far as the law allows." Here *abusing* means *consuming,* and not abusing in the bad sense, and also refers not only to the utility but to the substance of a thing. As the reader may have noted, the definitions accepted by Catholics all limit this right by laws for the common good.

These definitions do not limit the right of property by the extreme necessities of others. Such necessities

rarely occur. It is perhaps more prudent not to provide for them in explicit definitions or laws which might be easily misunderstood or misapplied, and thus become occasions of dangerous suggestions in practice. However this limitation, though not expressed, ought to be ever implied. This article treats of the right of property in the sense of a generic institution as opposed to communism as a generic institution, under which *no one* would have the right of private property. As Lugo observes, "the concrete manner in which this right exists is not *completely* from natural law alone, but depends, at least negatively, on human law; not only because many ways can be introduced of acquiring, losing and transferring dominion, and in fact have been introduced, by merely human law; but also because other ways of acquiring dominion which seem to have been introduced by natural law, still, at least negatively, depend on human law, since they could have been prevented by human law; as, in fact, many individuals are rendered by human law *incapable* of acquiring dominion.

Furthermore, we here speak of nature, natural rights, and natural law, as the remote and not as the proximate moral cause of the right of property. Thus in our country all the titles to land came first from the State.

The right of property is not a natural right so strictly as the right to marry, which would exist among men, however few, and even though not regarded as infected by selfish inclinations coming from original sin. The right of property must exist among men who live together in a great number, especially since they are infected by original sin. In such a condition it would be wrong not to have some kind of civil government with civil authority. The right of private property is from nature in the same sense, but would exist even though no civil government existed.

Let us now hear some of the words of Leo XIII. teach-

ing that the right of private property is from nature, under God and His providence.

The following passage is from the Encyclical *Quod Apostolici Muneris,* December 26, 1878:

"More wisely and profitably the Church recognizes the existence of inequality amongst men who are by nature unlike in mental endowments, and in strength of body, and even in amount of fortune: and she enjoins that the right of property and of its disposal, *derived from nature,* should in the case of every individual remain intact and inviolate. She knows full well that *robbery* and *rapine* have been so forbidden by God, the Author and Protector of every right, that it is unlawful even to covet the goods of others, and that thieves and robbers, no less than adulterers and idolaters are excluded from the kingdom of heaven. . . . Moreover, she lays the rich under strict command to give of their superfluity to the poor, impressing them with the fear of the divine judgment which will exact the penalty of eternal punishment unless they succor the wants of the needy."

The following passages are from the Encyclical *Rerum Novarum,* May 15, 1891:

"The Socialists, working on the poor man's envy of the rich, are striving to do away with private property, and contend that individual possessions should become the common property of all to be administered by the State or municipal bodies.

"These contentions are emphatically unjust because they would rob the lawful possessor, bring State action into a sphere not within its competence, and create utter confusion in the community.

"Every man has *by nature* the right to possess property as his own.

"Man precedes the State, and possesses, prior to the

formation of any State, the right of providing for the sustenance of his body.

"*The limits of private possessions* have been left (by God) to be fixed by man's own industry, and *by the laws of individual races.*

"With reason, the common opinion of mankind—little affected by the few dissentients who have contended for the opposite view—has found in the careful study of nature, and the laws of nature, the foundations of the division of property; and the practice of *all ages* has consecrated the principles of private ownership, as being preëminently in conformity with human nature, and as conducing in the most unmistakable manner to the peace and tranquillity of human existence. This same principle is confirmed and enforced by the civil laws—which, as long as they are just, derive from the law of nature their binding force. The authority of the divine law adds its sanction, forbidding us in severest terms even to covet that which is another's: 'Thou shalt not covet thy neighbor's wife: nor his house, nor his field, nor his man-servant, nor his maid-servant, nor his ox, nor his ass, nor anything which is his.'

"The right of property which has been proved to belong naturally to individual persons must likewise belong to a man in his capacity as head of a family: nay, such a person must possess this right so much the more clearly, in proportion as his position multiplies his duties.

"*The main tenet of Socialism, community of goods, is directly contrary to the natural rights of mankind.*

"Justice demands that the interests of the poorer classes should be carefully watched over by the administration, and that they who so largely contribute to the advantage of the community may themselves share in the benefits which they create, that, being housed, clothed

and enabled to sustain life, they may find their existence less hard and more endurable.

"When there is a question of defending the rights of individuals, the poor and helpless have a claim to special consideration (from the State)."

What is the theological note of this part of our thesis? What theological censure would be incurred by him who would deny its truth? In our answer we follow Vermeersch, *Questions on Justice*, n. 198. That the system of private property is licit, is not unjust, is clearly contained in Scripture, and is to be held as of *Catholic faith*. He who would affirm that this system has its origin from the State and would deny that any right of private property has its origin in nature, would openly contradict the teaching of Leo XIII. and incur the censure of temerity, to say the least.

Can a Catholic be a Socialist? Not if he holds the main tenet of the Socialists, namely, that all individual possessions should become the property of all, to be administered by the State or municipal bodies, or that the right of private property comes from the State and not from nature and God.

The words of the Declaration of Independence which are in accord with those of Pope Leo, are: "We hold these truths to be self-evident, that all men are endowed by their Creator with certain unalienable rights and that among these are Life, Liberty and the Pursuit of Happiness; and to secure these, governments have been instituted among men."

The Fifth Amendment of the Constitution says: "No person shall be deprived of life, liberty or property, without due process of law, nor shall private property be taken for public use, without just compensation."

This Fifth Amendment, ratified in 1791, limited the power of the Federal Government and not of the States. But the Fourteenth Amendment, ratified in 1868, says:

"Nor shall any *State* deprive any person of life, liberty or property without due process of law."

This amendment was made in order to limit the power of the States. The teaching of the Supreme Court on the origin of these rights is seen in the following words of Justice Field, cited by Mr. Hannis Taylor in his new work on *Due Process of Law,* page 491: "'As in our intercourse with our fellowmen, certain principles of morality are assumed to exist, without which society would be impossible, so certain inherent rights lie at the foundation of all governmental action, and upon a recognition of them alone, can free institutions be maintained. These inherent rights have never been more happily expressed than in the Declaration of Independence, that new Evangel of liberty to the people: "We hold these truths to be self-evident," that is, so plain that their truth is recognized upon their mere statement; "that all men are endowed," not by Edicts of Emperors or Decrees of Parliament or Acts of Congress, but "by their Creator, with certain unalienable rights," that is rights which cannot be bartered away, or given away, or taken away, except for punishment of crime; "and that among these are Life, Liberty and the Pursuit of Happiness, and to secure these," not to grant them, but to secure them, "governments are instituted among men. . . ." Among these inalienable rights, as proclaimed in that great document, is the right of men to pursue their happiness, by which is meant the right to pursue any lawful business or vocation, in any matter not inconsistent with the equal rights of others, which may increase their property, or develop their faculties, so as to give them their highest enjoyment.'

"The Fourteenth Amendment was intended to give practical effect to the Declaration of 1776 of inalienable rights, rights which are the gifts of the Creator, which the law does not confer, but only recognizes." In the

same case Justice Swayne said: "Property is everything which has exchangeable value, and the right of property includes the power to dispose of it according to the will of the owner. Labor is property, and, as such, means protection. The right to make it available is next in importance to the rights of life and liberty." In Allgeyer *v.* Louisiana the Court said: "The liberty mentioned in the Fourteenth Amendment means not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will, to earn his livelihood by any lawful calling; to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary and essential to carry out to a successful conclusion the purposes above mentioned."

In Adair *v.* United States the Court said: "Each right is subject to the fundamental condition that no contract, whatever its subject matter, can be sustained, which the law, upon reasonable grounds, forbids as inconsistent with the public interests, or as hurtful to the public order, or as detrimental to the common good."

The rights of life, liberty and property are all subject to certain sovereign powers of the State, such as the taxing power, the power of eminent domain and the police power. Therefore such rights are not inalienable in any strictly absolute sense. The State may rightfully call on a citizen to serve in the army and give his life for his country and its rights and liberties. The State can rightfully restrain any men from carrying on a business which is immoral, or injurious to public morals, or which causes a reasonable suspicion of immorality, or of injustice, private or public. Any business affected with a public interest may be regulated, provided due

consideration be given to vested rights and to prior contracts entered into by the State. Purely private vocations are as a general rule not subject to restraint by State power.

"However, the most innocent and constitutionally protected of acts or omissions may be made a step in a criminal plot, and if it is a step in such a plot, neither its innocence nor the constitution is sufficient to prevent the punishment of such a plot by law." Thus Congress passed the Sherman Act and the Clayton Act to prevent and punish acts tending to monopoly, to forcing prices, to restraining the free flow of trade by combinations which block free and fair competition. The Sherman Act has been already upheld by the Supreme Court as not contrary to the rights of liberty and property and freedom of contract. State laws imposing a minimum wage for women or children working in factories, have been upheld by the Supreme Court as being not arbitrary but reasonable restraints imposed on capitalists in the use of their property and the exercise of their liberty. The Sixteenth Amendment to the Federal Constitution, finally ratified in the year 1913, empowers Congress to impose the income tax, and Congress has emphasized by practical measures the principle that he who receives more individually, owes more for the general welfare.

States have made many local laws limiting liberty to dispose of one's own labor or to exercise other property rights. On appeal against these laws for alleged violation of rights guaranteed by the Declaration of Independence or by the Constitution, the Supreme Court has ever held that these laws are void if they are arbitrary, but are valid if they are reasonable or not manifestly unreasonable or arbitrary.

Some countries have no clear-cut written constitution. Our country is unique not only in having the oldest written Constitution but also, and especially, in having as

the guardian of the Constitution, a Supreme Court, a Judiciary which is not subordinate but coördinate with the Legislature and the Executive, a Judiciary whose members hold office during life or good behavior, and can be removed from office only through impeachment by a majority of the House before the Senate, the more slow and conservative branch of the Congress. Our Federal Judiciary thus far have little to fear from the insolence of office and power or from clamors of the multitude. Through the wisdom of Washington and Jefferson and Hamilton and Madison and Pinckney and the other fathers, we have in our explicit fundamental laws the sane principles of St. Thomas and Leo XIII. on the right of property as from nature and nature's God, and on the limitations of this right by the States or the United States, acting reasonably for the common good, and on their ample authority to introduce social reforms which may be deemed needful or useful in our day of big business with big capital. There is not and never was a country where the law made property more sacred and secure. Though the most conservative in this respect, our country can lawfully be also most progressive on sane lines, truly Catholic and truly American. There could be no shadow of an excuse for transplanting to American soil foreign Socialism, whose main tenet is public ownership and public administration of all wealth-producing property. Socialism is not only most anti-Catholic, but, by the fact, also most anti-American. For these principles, how America should love the Church and the Church America, nay, how the whole world should love the Church and America as the two mightiest guardians of principles which are saviours of society from envy, madness, anarchy, misery and slavery.